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Report of the United Nations High Commissioner for Human Rights*

Summary

In the present report, submitted pursuant to General Assembly resolution 48/141, the United Nations High Commissioner for Human Rights considers the protection of economic, social and cultural rights in situations of armed conflict, with a specific focus on the rights to health and to education.

* Late submission.

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I. Introduction

1. During emergency situations, such as armed conflicts, the protection of civil, political, economic, social and cultural rights is crucial. Displacement and destruction of social infrastructure caused by conflicts often significantly undermines access to education, work, health care or other services necessary for livelihood. Neglect of economic, social and cultural rights during conflicts and other emergency situations may lead to further violations of human rights and, in turn, further conflict.

2. Both international human rights law and international humanitarian law apply in situations of armed conflict. Treaty mechanisms and international courts, including the International Court of Justice as well as several regional human rights courts, have deliberated on the interaction between these two bodies of law, noting that both international human rights law and international humanitarian law share the common aims of protecting human life and dignity, and prohibiting discrimination, and that both are applicable in situations of emergency.[1]

II. International legal framework applicable to economic, social and cultural rights in conflict

3. A number of important instruments of international humanitarian law are relevant to economic, social and cultural rights. The four Geneva Conventions of 1949 and the Hague Regulations of 1907 contain multiple provisions on the rights of the wounded and the sick. The Additional Protocols I and II to the 1949 Geneva Conventions forbid the starvation of civilians as a method of warfare, and attacks on objects indispensable to the survival of the civilian population. Additional Protocol I, as well as customary law, prohibits attacks directed at civilian objects. Such objects include public services infrastructure, which has implications for the rights to education, food, health, housing and water, as well as for cultural rights.

4. International humanitarian law obliges the parties to a conflict to ensure adequate conditions of life for the civilian population with regard to matters such as health, food, relief assistance, work, employment and education. International humanitarian law provides a set of rules that include the obligations to ensure food and medical supplies for the population (see the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, art. 55), to ensure and maintain medical and hospital establishments and services, and public health and hygiene (ibid., art. 56), to agree to relief schemes on behalf of the population if they are inadequately supplied (ibid., art. 59), to ensure the rapid distribution of relief consignments (ibid., art. 61), or to ensure that protected persons receive the individual relief consignments sent to them (ibid., art. 62).

5. It is recognized in the Proclamation of Teheran, Final Act of the International Conference on Human Rights (Teheran, 22 April to 13 May 1968)[2] that it is the obligation of States to eradicate "massive denials of human rights, arising out of any aggression or any armed conflict".

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[1] Office of the United Nations High Commissioner for Human Rights (OHCHR), *International Legal Protection of Human Rights in Armed Conflict* (New York and Geneva, 2011).

[2] The extent to which international humanitarian law and international human rights law overlap in times of conflict is a matter of interpretation, but the absolute separation between the two legal systems has been gradually bridged since the adoption of the Charter of the United Nations and the 1968 International Conference on Human Rights.

A. Jurisprudence of the International Court of Justice

6. The International Court of Justice affirmed the applicability of international human rights law during armed conflicts in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons,[3] wherein the Court observed that the International Covenant on Civil and Political Rights did not cease to apply in times of war.

7. In its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the Court confirmed the applicability of international human rights law to situations of military occupation and noted that, in the territories under its occupation, the occupying Power was bound by the human rights provisions of the International Covenant on Economic, Social and Cultural Rights and of the Convention on the Rights of the Child, inter alia. The Court found a range of provisions in the Convention and the Covenant that were relevant to the right to an adequate standard of living, the right to food, clothing and housing, the right to health, and the right to education.[4]

8. In 2005, the Court delivered a binding judgment in the case concerning Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo* v. *Uganda)* where it applied international human rights law to an occupation, citing the findings from its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.[5]

9. The European Court of Human Rights has applied the European Convention on Human Rights to the conflict in the Russian Federation[6] (see *Isayeva, Yusupova and Bazayeva* v. *Russia*) and to Turkish occupation of Northern Cyprus[7] (*Cyprus* v. *Turkey*). The Inter-American Court of Human Rights has also applied international human rights law in the context of the conflict in Guatemala.[8]

B. Practice of the United Nations treaty monitoring bodies

10. The Human Rights Committee has recognized the applicability of the International Covenant on Civil and Political Rights to both international and non-international armed conflicts, including situations of occupation. The Committee has addressed those issues in a general comment,[9] and in its concluding observations on States' periodic reports,[10]

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[3] International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226: "The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency." (para. 25)

[4] International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004*, p. 136.

[5] International Court of Justice, *Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), ICJ Reports 2005*, p. 168.

[6] European Court of Human Rights, *Isayeva, Yusupova and Bazayeva* v. *Russia*, 24 February 2005.

[7] European Court of Human Rights, *Cyprus* v. *Turkey*, 10 May 2001.

[8] Inter-American Court of Human Rights, *Bamaca Velásquez* v. *Guatemala*, Judgment (25 November 2000), para. 207.

[9] Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation on States Parties to the Covenant, para. 11.

[10] CCPR/C/USA/CO/3, para. 10: "The State party should in particular (a) acknowledge the applicability of the Covenant with respect to individuals under its jurisdiction but outside its territory, as well as its applicability in time of war"; CCPR/C/COD/CO/3, para. 13: "The State party should take all necessary steps to strengthen its capacity to protect civilians in the zones of armed conflict, especially

confirming that international humanitarian law and international human rights law are complementary rather than mutually exclusive.

11. The International Covenant on Civil and Political Rights contains a derogation clause in article 4 that allows States parties to limit the enjoyment of certain rights in situations of public emergency: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin". The article has been interpreted by the Human Rights Committee in its general comment No. 29.[11] According to the Committee "during armed conflict, whether international or non-international, rules of international humanitarian law become applicable and help, in addition to the provisions in article 4 and article 5, paragraph 1, of the Covenant, to prevent the abuse of a State's emergency powers. The Covenant requires that, even during an armed conflict, measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation" (para. 4).

12. The International Covenant on Economic, Social and Cultural Rights contains no derogation clause, and the Committee on Economic, Social and Cultural Rights has confirmed that the Covenant applies even in times of conflict or general emergency.

13. In its general comment No. 3,[12] the Committee on Economic, Social and Cultural Rights has affirmed that States parties have a core obligation to ensure the satisfaction of at least minimum essential levels of each of the Covenant's rights. This interpretation of the Covenant has been further elaborated by the Committee in subsequent general comments, in particular general comment No. 14 on the right to health and general comment No. 15 on the right to water, wherein the Committee confirmed that the core obligations related to those rights are non-derogable.[13]

14. The Committee on Economic, Social and Cultural Rights has addressed the realization of the Covenant during armed conflict, requiring States parties to do everything in their power to improve the enjoyment of economic, social and cultural rights. With regard to Afghanistan, the Committee asked how the State intended to ensure access to education for children on the way to and from school given a deteriorating security situation.[14] In the case of Colombia, the Committee asked whether the transitional justice process mainstreamed economic, social and cultural rights[15] and what measures were being taken to protect school premises from occupation[16] by armed groups. In its review of the Democratic Republic of the Congo, the Committee stressed that the Government, even in the Eastern provinces experiencing conflict, must do everything possible to realize at least core aspects of the Covenant's provisions, until a stabilized situation in the entire country enabled fuller implementation.

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women and children". See also the Committee's concluding observations on Israel (CCPR/CO/78/ISR), Sri Lanka (CCPR/CO/79/LKA) and Colombia (CCPR/CO/80/COL).

[11] Human Rights Committee, general comment No. 29 (2001) on states of emergency (article 4), para. 3.

[12] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations (art. 2 (1) of the Covenant), para. 10.

[13] Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health (art. 12), para. 47; and general comment No. 15 (2003) on the right to water (arts. 11 and 12 of the Covenant), para. 40.

[14] See E/C.12/AFG/Q/2-4), para. 38.

[15] See E/C.12/COL/Q/5, para. 5.

[16] Ibid., para. 38.

15. State obligations associated with the core content of the rights to health, food, housing, access to water, or to education, even during situations of emergency or armed conflict, therefore remain in effect.

III. State obligations under the International Covenant on Economic, Social and Cultural Rights

16. States are bound by the International Covenant on Economic, Social and Cultural Rights even during armed conflicts and public emergencies.

A. Respect, protect and fulfil

17. State obligations deriving from the International Covenant on Economic, Social and Cultural Rights have been categorized as the obligations to respect, protect and fulfil[17] the rights enumerated in the Covenant. The obligation to respect refers to States' obligations to refrain from any action that would interfere with an individual's enjoyment of economic and social rights. For example, in a situation of conflict, States should refrain from denying access to health facilities to members of an opposition group, and from militarily occupying a school. Such actions would represent direct interference by the State in the enjoyment of the rights to health and to education.

18. The State obligation to protect requires States to ensure that economic and social rights are not infringed by third parties. So, for example, States are required to prevent, punish and redress attacks by armed groups against health and educational facilities as these are a key element for the enjoyment of the rights to health and education.

19. The obligation to fulfil refers to the State obligation to take all necessary legislative, administrative, budgetary, judicial and other measures to guarantee the enjoyment of each economic and social right at a satisfactory level. States need to take measures to enable individuals to fulfil their economic and social rights themselves or, if necessary, to ensure direct provision of certain goods and services. In a conflict, the destruction of social infrastructure might mean that people are not in a position to feed themselves. In such cases, States should make sure that food aid reaches the population, as this will be both an underlying determinant for the enjoyment of the right to health, and will ensure freedom from hunger, and respect for the minimum core content of the right to food.

B. Progressive realization

20. According to article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, States are required to take steps to the maximum extent of available resources for the progressive achievement of the rights contained in the Covenant.

21. The Committee on Economic, Social and Cultural Rights clarified in its general comment No. 3 that progressive realization should not be misinterpreted as depriving the obligation of content, as the Covenant establishes clear obligations for States parties to take the necessary steps to the maximum of its available resources and imposes an obligation to

[17] See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2003) on the right to water (arts. 11 and 12 of the Covenant), para. 21; general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 33; and general comment No. 12 (1999) on the right to adequate food, para. 15.

move as expeditiously and effectively as possible towards that goal.[18] Progressive realization means a pattern of improvement or advancement and entails the obligation to ensure a broader enjoyment of the rights over time. The Committee stressed that steps taken to achieve the full realization of the rights "should be deliberate, concrete and targeted as clearly as possible toward meeting the obligations recognized in the Covenant" (see general comment No. 3, para. 2).

22. Economic and social rights carry a series of obligations, some of which are immediate and others of a progressive nature. The obligation "to take steps" imposes immediate obligations to take deliberate and targeted steps and to use all appropriate means. Another set of immediate obligations concerns the satisfaction of the minimum core content of each of the rights protected under the Covenant.

C. Prohibition of retrogressive measures

23. The duty to progressively fulfil economic, social and cultural rights implies a prohibition of measures that would limit the realization of the rights guaranteed by the Covenant. Any exception would have to be justified against certain strict criteria.

24. A retrogressive measure is one that, directly or indirectly, leads to a backward movement in the enjoyment of the rights recognized in the Covenant. As stated by the Committee on Economic, Social and Cultural Rights in its general comment No. 3, any deliberately retrogressive measure "would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources" (para. 9).

25. Several other general comments issued by the Committee on Economic, Social and Cultural Rights apply this notion to specific rights included in the Covenant, and consider that the adoption of deliberately retrogressive measures constitutes a prima facie violation of the Covenant.[19]

26. Retrogressive measures cannot be justified solely on the basis of the existence of an armed conflict or other emergency. The Committee on Economic, Social and Cultural Rights in its concluding observations on the Democratic Republic of the Congo acknowledged that recurrent armed conflicts posed great challenges to the State's ability to fulfil its obligations under the Covenant. However, it voiced concern about the steady decrease over a decade of the resources allocated to social sectors, in particular health and social protection, while budgetary allocations to defence had increased considerably. This led the Committee to find that mismanagement of international cooperation aid and unbalanced budgetary allocations constitute violations of State obligations under article 2 (1), despite ongoing armed conflict.[20]

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[18] Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 9.

[19] Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 11, general comment No. 12 on the right to adequate food, para. 19; general comment No. 13 (1999) on the right to education, paras. 45 and 49; general comment No. 14 , paras. 32, 48 and 50; general comment No. 15, paras. 19, 21 and 42; general comment No. 17 (2005) on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author, paras. 27 and 42; general comment No. 18 (2005) on the right to work, paras. 21 and 34; general comment No. 19 (2008) on the right to social security, paras. 42 and 64; and general comment No. 21 (2009) on the right of everyone to take part in cultural life, para. 65.

[20] See E/C.12/COD/CO/4, para. 16.

D. Minimum core obligations

27. General comments Nos. 14, 15, 17 and 19 also make clear the absolute prohibition of any retrogressive measures that are considered incompatible with the core obligations determined for each right.[21] The notion of minimum core obligations is considered a common element of all Covenant rights and the *raison d'être* of the Covenant.[22] The Committee on Economic, Social and Cultural Rights has pointed out on numerous occasions that minimum core rights and obligations continue to apply in situations of armed conflict, emergency and natural disaster.[23]

28. In 2007, the Committee adopted a statement entitled "An evaluation of the obligation to take steps to the "maximum of available resources" under an Optional Protocol to the Covenant".[24] The statement provides elements for interpreting the prohibition of retrogression. It confirms that the Committee will adopt a strict scrutiny standard when retrogressive measures impact upon the enjoyment of the minimum core content of the Covenant,[25] and that this consideration applies to all the rights included in the Covenant.

E. Maximum available resources

29. During armed conflicts, States often allocate most resources to military and security policies, military training, counter-insurgency operations and intelligence gathering. However, States often have more difficulty in collecting taxation revenues, incur expenses for damage to infrastructure caused by the conflict, and experience a general decline in wealth.

30. However, in order for a State to be able to attribute its failure to meet its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations. In addition to meeting core obligations, maximum available resources must be fully used to progressively realize all human rights in a way that guards against retrogressive steps or impacts and at least maintains the status quo for the broader range of human rights obligations.[26]

F. Prohibition of discrimination

31. Retrogressive measures cannot be introduced or applied in a discriminatory manner[27] whether directly or indirectly, or in a formal or substantive manner.[28] This principle requires that any discriminatory practices related to laws or policies that

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[21] Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 32; general comment No. 15 , para. 42; general comment No. 17 , para. 42; and general comment No. 19 , para. 64.

[22] See Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 10.

[23] See Committee on Economic, Social and Cultural Rights, Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10), para. 18; general comment No. 12, para. 6; general comment No. 15, para. 40; and general comment No. 14, para. 47.

[24] See E/C.12/2007/1, paras. 9–10.

[25] Ibid., para. 10 (b).

[26] See further, Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, para. 45; general comment No. 19, para. 42.

[27] See E/C.12/ISL/CO/4.

[28] See Committee on Economic, Social and Cultural Rights, general comment No. 19, para. 42.

distinguish between groups on grounds of sex, race, ethnicity or religion be eliminated immediately.

32. This prohibition of discrimination extends beyond a mere negative duty to avoid overtly discriminatory practices. It requires respect for all groups and individuals and, when resources are limited, the State has a duty to adopt measures to protect those most at risk.[29] The Committee on Economic, Social and Cultural Rights has also emphasized that "policies and legislation should not be designed to benefit already advantaged social groups at the expense of others".[30]

IV. The right to health in conflict

A. Content of the right to health

33. The right of everyone to the enjoyment of the highest attainable standard of physical and mental health is recognized in article 12 of the International Covenant on Economic, Social and Cultural Rights, and the Committee on Economic, Social and Cultural Rights, in its general comment No. 14, has provided an authoritative interpretation of the article.

34. In its general comment No. 14, the Committee specified concrete legal obligations for States in times of armed conflict and stated explicitly that the obligation to respect the right to health includes an obligation for States to refrain from limiting access to health services as a punitive measure.[31]

35. General comment No. 14 requires States to comply with core obligations that represent the minimum essential levels of the right to health, non-compliance with which cannot be justified even in times of conflict, as they are non-derogable. These include:

(a) The obligation of States to ensure equitable distribution and access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;

(b) The obligation to provide essential medicines;

(c) The obligation to formulate a national health plan or policy in a transparent and participatory way, taking into consideration the special needs of vulnerable populations.

36. Even when conflicts result in resource constraints, States are required to ensure the availability, accessibility and acceptability of good quality health facilities, goods and services, especially to groups rendered vulnerable by conflict.[32] A functioning health system, including health-care workers, is crucial to the enjoyment of the right to health of people affected by or involved in conflict.[33]

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[29] See Committee on Economic, Social and Cultural Rights, general comment No. 15 , para. 13.

[30] See Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 11.

[31] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 34.

[32] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 43; report of the Special Rapporteur on the right to the highest attainable standard of health (A/68/297, para. 11).

[33] The Committee on Economic, Social and Cultural Rights clarified the nature of these interrelated and essential elements as availability, accessibility, acceptability and quality in its general comment No. 14, para. 12 (a–d)). The underlying determinants of health include safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the World Health Organization Action Programme on Essential Drugs.

37. Violations of the right to health during armed conflict and other situations of instability can take a number of forms, including the decimation of health-care systems; direct attacks on medical personnel, facilities and transports, as well as on the wounded and sick; the criminalization of the provision of health care and the obstruction of access to health care. In addition to limiting their effective operation during periods of instability, the destruction of health-care systems has a lasting effect beyond the conflict as it hinders the development of health infrastructure and human resource capacity-building.[34]

38. The right to health is jeopardized and violated when access to the underlying determinants of health, such as safe and potable drinking water, adequate sanitation, housing and food, is threatened or restricted. During armed conflict and instability, the health needs of the population are at their greatest and the challenges to the protection of the right to health most formidable. Other consequences include the flight *en masse* of trained medical and other health personnel, which greatly weakens the delivery of health care.

B. Vulnerable and marginalized groups

39. States should pay particular attention to persons rendered vulnerable by conflict, including internally displaced, women, children, older persons and persons with disabilities, among others. States are required to address marginalization arising from social, political and economic exclusion and discrimination.

40. Conflict may aggravate women's exposure to ill-health, discrimination and gender-based violence. Women often experience higher rates of poor health outcomes in conflict owing to their physical and reproductive needs during pregnancy and childbirth. Most maternal deaths in conflict occur during delivery or in the immediate post-partum period owing to lack of availability of quality reproductive and maternal care, such as family planning, emergency obstetric services, and pre- and postnatal care.[35]

41. Children are particularly vulnerable in conflict situations, owing especially to poor hygiene and food insecurity. Malnutrition undermines children's immunity and resistance to preventable and communicable diseases, such as diarrhoea and malaria. The breakdown of disease surveillance and vaccination systems also contributes to the vulnerability of children to ill-health and hence hinders their right to health.

42. Conflicts render older persons particularly vulnerable. Reduced mobility, weakened vision and chronic illnesses such as arthritis or rheumatism can make access to support difficult. Aid services often do not take these issues into consideration and in times of displacement, older persons are sometimes reluctant to leave their homes and can be the last to flee from danger. Once displaced, older persons suffer greater risks and often become both socially isolated and physically separated from their families, thus further increasing their vulnerability.

C. Violations of the right to health through attacks against health workers

43. Attacks on health personnel, facilities and services, as well as interference with access to health care for the injured and sick, are common in conflict situations. The Independent International Commission of Inquiry on the Syrian Arab Republic in its report of February 2015 condemned attacks on hospitals and field clinics by government forces,

[34] See A/68/297 (see footnote 32), para. 29.
[35] Ibid., para. 43.

the prevention of access to hospitals by snipers and the obstruction of the delivery of medicines.[36] The Commission denounced the attack, arrest, unlawful detention and disappearance of ambulance drivers, nurses, doctors and medical volunteers. The Commission also noted that the anti-terrorism laws issued in 2012 effectively criminalized medical aid to the opposition, thereby contravening the customary international humanitarian law rule that "under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom".[37] As a result, the health-care system has been severely affected in the course of military operations carried out by government forces. Health-care systems have also suffered as a result of a deliberate and systematic campaign to persecute medical staff treating anyone perceived to be opposing the Government.

44. The report of the International Commission of Inquiry on Libya[38] highlighted the seriousness of allegations that government forces had prevented persons from gaining access to medical treatment not only by refusing to facilitate medical assistance, but also by blocking access to medical facilities, and attacking or abducting persons presumed to be associated with anti-government protests. It noted that "the deteriorating security situation has had a deleterious effect on the health sector"[39] and indicated that it had received reports of the "intentional targeting of protected medical personnel, transport, unit and facilities."

45. The International Commission of Inquiry on Guinea reached similar conclusions, highlighting that the threats by the military against the wounded and the medical personnel at Donka Hospital and the military occupation of the hospital itself constituted serious violations of the right to health, as they forced large numbers of the wounded to leave hospitals or refrain from seeking care for fear of retaliation.[40]

46. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health produced a thematic report[41] on the right to health in situations of conflict or insecurity, wherein he noted that health-care workers were essential for ensuring availability of health-care services, and that there was an immediate and continuous obligation on States to provide health-care workers and humanitarian organizations with adequate protection during periods of conflict. The Special Rapporteur pointed out that attacks on health workers, including assaults, intimidation, threats, kidnapping and killings, as well as arrests and prosecutions, were increasingly being used as a strategy in conflict situations. The Special Rapporteur also highlighted that health-care workers' refusal to cooperate in providing information about patients where laws may violate fundamental human rights often results in harassment, relocation, torture, arrest and sentencing.[42]

47. To counter this trend in conflict situations, on 11 December 2014 the General Assembly adopted its resolution 69/132 on global health and foreign policy, thereby recognizing for the first time the severity of attacks on health workers, facilities and

[36] See the report of the Independent International Commission of Inquiry on the Syrian Arab Republic (A/HRC/28/69, paras. 80–83).

[37] See Additional Protocols I (art. 16 (1)) and II (art. 10 (1)) to the Geneva Conventions of 12 August 1949.

[38] Report of the International Commission of Inquiry on Libya (A/HRC/17/44).

[39] Ibid., para. 174.

[40] Security Council, Report of the International Commission of Inquiry mandated to establish the facts and circumstances of the events of 28 September 2009 in Guinea, 18 December 2009 (S/2009/693), para. 175, available from www.refworld.org/docid/4b4f49ea2.html.

[41] Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health of 9 August 2013 (A/68/297).

[42] See A/68/297, para. 28.

patients in all circumstances, and demanding respect by States for the provisions of human rights law and of international humanitarian law.

48. In the resolution, the General Assembly urged States to take immediate steps to ensure that health workers in all countries are protected from violence, whether in armed conflict or in times of peace, including:

(a) Respecting the integrity of medical and health personnel in carrying out their duties in line with their respective professional codes of ethics and scope of practice;

(b) Respecting the provisions of international humanitarian law and international human rights law, including the right to the highest attainable standard of health, in protecting health workers from obstruction, threats, and physical attack;

(c) Promoting equal access to health services;

(d) Developing preventive measures to enhance and promote the safety and protection of health workers, including the collection of data on attacks on obstruction, threats and physical attacks on health workers.

49. States should ensure, through legislative and other measures, that the ethical, impartial provision of medical treatment is not criminalized, irrespective of the identity of the patient, and that effective protection should be available for all medical personnel. States should first and foremost refrain from actively obstructing access to medical facilities, progressively promote their improvement and facilitate access in areas under their effective control or jurisdiction. States should also refrain from using medical facilities for military purposes; refrain from discriminating against any group in facilitating access to medical services; ensure accountability for violations of the right to health, including redress for victims; and ensure the protection of health workers from violence inflicted by third parties.

50. International humanitarian law in article 56 of the Fourth Geneva Convention affirms that States should guarantee that medical personnel can carry out their duties, as this is instrumental in fulfilling the general obligation of ensuring access to medical facilities and services, and public health and hygiene benefits. This involves measures to safeguard the activities of medical personnel, who must be exempted from any restrictive measures, such as restrictions on movement, requisitioning of vehicles, supplies or equipment, liable to interfere with the performance of their duty.

V. The right to education in conflict

A. Content of the right to education

51. The right to education[43] is enshrined in article 26 of the Universal Declaration of Human Rights, and in numerous other international human rights instruments. A clear formulation of the right to education can be found in article 13 of the International Covenant on Economic, Social and Cultural Rights. The Convention on the Rights of the Child also includes a detailed recognition of the right to education in its articles 28 and 29.

[43] The right to education is also explicitly mentioned in article 5 (e) (v) of the International Convention on the Elimination of All Forms of Racial Discrimination; article 10 of the Convention on the Elimination of All Forms of Discrimination against Women; articles 30, 43 (1) (a), (b) and (c), and 45 (1) (a) and (b) of the Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families; and article 24 of the Convention on the Rights of Persons with Disabilities.

52. The right to education is an important precondition for the meaningful exercise of most of the freedoms protected by human rights law. Education enhances freedom of expression, assembly and protest, the right to vote, the right to participate in public affairs, the right to form a family and to freely decide the number and spacing of children, the right to form and join trade unions, the right to work, the right to participate in cultural life and the right to benefit from scientific progress.

The Committee on Economic, Social and Cultural Rights in its general comment No. 13 on the right to education[44] defined the core content of the right to education as including access to public educational institutions and programmes on a non-discriminatory basis, conformity of education to the objectives of the full development of the human personality and a sense of its dignity. It also includes free and compulsory primary education, the adoption and implementation of a national educational strategy which includes provision for secondary, higher and fundamental education, and free choice of education without interference from the State or third parties, subject to conformity with "minimum educational standards" (art. 13 (3 and 4)) of the International Covenant on Economic, Social and Cultural Rights).

53. When conflicts result in resource constraints, States are required to ensure the availability, accessibility and acceptability of good quality education facilities, goods and services, especially to groups rendered vulnerable by conflict.[45]

54. In situations of considerable difficulty, including armed conflict, the burden of proof still falls on the State to demonstrate that every effort has been made to use all resources at its disposal to satisfy minimum core obligations, including through international cooperation and assistance.[46] The Committee on the Rights of the Child, considering the State party report of the Democratic Republic of the Congo, urged the Government to ensure completion of children's compulsory schooling and take action to address the reasons behind non-completion, including persisting zones of insecurity, displacement of families, lack of transport and destruction of school infrastructure.[47] When highlighting issues to the Government of Thailand,[48] the Committee asked the State to provide updated information on measures taken to guarantee the right to education in the southern border provinces in the light of attacks against teachers and schools there.

B. Vulnerable and marginalized groups

55. Challenges posed by insecurity and armed conflict on the rights of persons with disabilities to education are particularly serious and complex. The Committee on Economic, Social and Cultural Rights in its general comment No. 5 on persons with disabilities stated that the effects of disability-based discrimination have been acute in the fields of education and in access to public services.[49]

56. When reviewing the implementation of the Convention of the Rights of the Child in Pakistan, the Committee on the Rights of the Child raised concerns about the vulnerability of displaced children to malnutrition, disease and harsh weather, threatening their health

[44] See Committee on Economic, Social and Cultural Rights, general comment No. 13, para. 57.
[45] The Committee clarified the nature of those elements in its general comment No. 13, para. 57 .
[46] See Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 10; and general comment No. 12, para. 17.
[47] See CRC/C/COD/CO/2, para. 67.
[48] See E/C.12/THA/Q/1-2, para. 23.
[49] See Committee on Economic, Social and Cultural Rights, general comment No. 5 (1994) on persons with disabilities, para. 15.

and survival, recommended that displaced children be provided with shelter, nutrition, sanitation, health care and education, as well as with physical and psychological recovery services, and that the State party should pay special attention to particularly vulnerable groups, including unaccompanied and separated children, children with disabilities, and children suffering from malnutrition and diseases.[50]

57. With regard to Sri Lanka, the Committee on the Rights of the Child expressed deep concern over the poor living conditions of children, including unaccompanied children and children with disabilities, who had been kept for months in internally displaced persons' camps.[51] In the case of Afghanistan the Committee recommended that the State party allocate increased resources to education in order to ensure adequate school facilities throughout, and create a truly inclusive educational system welcoming children with disabilities as well as children from all minorities.[52] The Committee on the Elimination of All Forms of Discrimination against Women has also raised the issue of disability, requesting information on the measures taken by the State party "to improve particularly the enrolment and literacy rates of girls and young women, including women and girls with disabilities, internally displaced women and girls".[53]

58. States have frequently raised the right to education of persons with disabilities in the context of the universal periodic review, focusing mainly on improving access to education and prevention of their dropping out from the education system.[54]

59. Girls' access to education is often subjected to discriminatory restrictions in peacetime which are exacerbated during conflicts and in processes of political transition. The United Nations Educational, Scientific and Cultural Organization (UNESCO) notes in its Education for All Global Monitoring Report that in countries affected by conflict, girls make up the majority of primary and secondary age children who are not in school.[55] The denial of girls' rights to education in crisis and conflict situations can have long-term impacts and exacerbate gender inequalities.

60. The Committee on the Rights of the Child noted in the case of Rwanda that there has been discrimination against displaced girls in the provision of repatriation and reintegration assistance and that many girls have been unable to resume education following the conflict.[56]

C. Violations of the right to education through attacks against students, teachers and education facilities

61. Attacks resulting in death or injury to children and educators and the destruction or military occupation of educational facilities are common during armed conflict and in situations of insecurity. A 2010 report[57] issued by UNESCO estimated that in recent years the reported number of attacks on students and education staff, as well as bombings and burnings of school buildings, had risen dramatically.

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[50] See CRC/C/PAK/CO/4, para. 84.
[51] See CRC/C/LKA/CO/3-4, para. 64.
[52] See CRC/C/AFG/CO/1, para. 61.
[53] See CEDAW/C/TCD/Q/4, para. 23.
[54] See reports of the Working Group on the Universal Periodic Review on Eritrea (A/HRC/13/2); Tajikistan (A/HRC/19/3); Haiti (A/HRC/19/19); Russian Federation (A/HRC/11/19).
[55] See UNESCO, Education for All Global Monitoring Report 2011 – "The Hidden Crisis: Armed Conflict and Education" (Paris, 2011).
[56] See CRC/C/OPAC/RWA/CO/1, paras. 21–22.
[57] UNESCO, *Education under Attack: 2010* (Paris, 2010), available from http://unesdoc.unesco.org/images/0018/001868/186809e.pdf.

62. The effect of such attacks is felt in the loss of, or injury to, students, teachers and intellectuals; the flight of students and staff; fear of turning up to class; damage to buildings, materials, and resources; staff recruitment difficulties; shelving of investment; and a generalized degradation of the education system.[58]

63. The data provided in the 2014 report of the Secretary-General on children and armed conflict suggests that schools are often conflict battlegrounds in many armed conflicts. Attacks targeting or impacting schools, students and educational staff, whether by State armed forces or by non-State actors, appear widespread in conflicts. Excessive use of force and the fact that hostilities often take place in urban areas make educational facilities frequent casualties of warfare.[59]

64. The United Nations treaty bodies have regularly addressed the protection of education in armed conflict. The Committee on Economic, Social and Cultural Rights considered attacks on schoolchildren and educational facilities to be serious violations of the right to education.[60] The Committee also asked States parties to provide information about measures taken to protect school premises from occupation by armed groups and the consequent interruption of classes.[61] Moreover, the Committee expressed its concern about the increase in the number of child victims of attacks against schools by insurgents and the throwing of acid to prevent girls and female teachers from going to school.[62]

65. The Committee on the Rights of the Child confirmed in its day of general discussion[63] on education in emergency that the States' duty to provide education remains unaffected even in times of emergency and conflict. The Committee, in addressing the question of military occupation of schools by State armed forces, recommended ceasing military occupation and ensuring compliance with humanitarian law and the principle of distinction.[64]

66. The Special Rapporteur on the right to education highlighted the need to protect persons with disabilities in conflict situations, noting that persons with disabilities, whatever their sex, age or geographical origin, suffer from a pervasive and disproportionate denial of their right to education. The Special Rapporteur furthermore highlighted that in emergencies, particularly during conflicts and the post-conflict period, the right to education should be better addressed by States.[65]

67. In the context of insecurity and armed conflict, States must abstain from acts that disrupt the process of education, including the military occupation of schools; respect the obligation to fulfil the minimum core content of the right to education, which is non-derogable; and prevent and punish attacks against students, teachers and educational facilities.

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[58] B. O'Malley, *Education under Attack 2010: A summary, Protecting Education from Attack: A State-of-the-Art Review* (UNESCO, 2010), p. 37.

[59] A/68/878

[60] See E/C.12/ISR/Q/3, para. 36.

[61] See E./C.12/COL/Q/5, para. 38.

[62] See E/C.12/AFG/CO/2-4, para. 43.

[63] Committee on the Rights of the Child, "Day of General Discussion on the Right of the Child to Education in Emergency Situations: Recommendations", forty-ninth session, 19 September 2008.

[64] See CRC/C/OPAC/LKA/CO/1, para. 25.

[65] See Report of the Special Rapporteur on the right to education: right to education in emergency situations (A/HRC/8/10, para. 5).

VI. Conclusions

68. **International humanitarian law and human rights law provide complementary and mutually reinforcing protection of economic and social rights in situations of conflict. International humanitarian law imposes obligations on States engaged in a conflict to refrain from harming the civilian population and also to ensure adequate conditions of life for the civilian population with regard to matters of health, food, relief assistance, work, employment and education. The application of human rights law, and in particular the International Covenant on Economic, Social and Cultural Rights, to conflict situations, helps in clarifying the content of the adequate conditions of life for the civilian population as guaranteed by international humanitarian law and ensures greater protection of the civilian population.**

69. **States experiencing a situation of conflict must refrain from interfering with the individual's enjoyment of economic and social rights and protect the enjoyment of those rights from attacks by third parties, including by armed groups. Moreover, States cannot put aside, or postpone to peaceful times, the fulfilment of the core content of the rights to health, food, housing, access to water, or to education. Retrogressive measures in the enjoyment of the core content of economic and social rights cannot be justified exclusively on the basis of the existence of a conflict: States have to demonstrate that any retrogression was unavoidable and that all the possible measures have been taken, including seeking international cooperation and assistance, to overcome the resource constraints. States must also distribute the maximum available resources on a non-discriminatory basis.**

70. **Even when conflicts result in resource constraints, States are required to prioritize the availability, accessibility and acceptability of good quality health and education facilities, goods and services to groups rendered vulnerable by conflict.**

71. **A fundamental step to be taken by States to ensure availability of health care is to protect medical personnel from violence. States should also refrain from acts that disrupt the process of education, and should fulfil the minimum core content of the right to education, which is non-derogable.**